

FAQ on Gov. Hochul's 2023 Bail Proposal

1. **What would Gov. Hochul's bail proposal do?** The [Governor's proposal](#) would remove the standard by which judges are required to evaluate whether to set bail, remand, or other conditions in bail-eligible cases. Specifically, it would remove this language: "The court in all cases, unless otherwise provided by law, must impose the least restrictive kind and degree of control or restriction that is necessary to secure the principal's return to court when required." In other words, contrary to what she said in her State of the State, it would remove more than simply "the least restrictive" component, which is a Constitutional standard codified in the 2019 bail reform law, but also the stated purpose of setting bail – to ensure a person returns to court – which has *always* been the standard in New York State. Instead, judges would be left with a list of factors to consider with no guidance at all on how to evaluate or apply them.
2. **Isn't she just giving judges more discretion?** The current standard, which she proposes to remove, *is* discretionary. It's up to judges to apply it, in their discretion, based on the facts of the case and the factors in the law. Removing it would add confusion, not discretion.
3. **Will Gov. Hochul's bail proposal improve public safety?** No, and even she has not suggested it will. In her [State of the State](#), she said, "Of course, we know that changing our bail laws will not automatically bring down crime rates." Instead, she has said that the changes in the law are intended to add clarity and remove confusion for judges (which makes no sense, as judges would have no standard whatsoever through which to evaluate whether to set bail).
4. **Polls show crime remains a top concern for New Yorkers. What should lawmakers do?** Everyone has a right to be safe and lawmakers need to take bold action to prevent violence in communities across the state. But if we blame the wrong cause, we'll end up with the wrong solution. The safest communities have the best schools, the highest-paying jobs, the most stable housing, the greatest access to health care, including mental health care and drug treatment, and more. Yet many communities across the state lack these resources. In the interest of community safety and equity, lawmakers must heed demands for deep investments and policy changes to fill these massive gaps. The data is clear: [bail reform is *not* the issue](#).
5. **If Gov. Hochul wants to offer greater clarity to judges, will this proposal work?** No. In fact, the Office of Court Administration [testified](#) at a recent legislative hearing that judges are *not* confused about the bail law. Moreover, removing the standard will add confusion and, more importantly, encourage judges to rely on their own biases.
6. **What about "repeat offenders"?** In the pre-trial context, guilt or innocence has not yet been ascertained, making this a misleading (and dehumanizing) term. Furthermore, repeat arrests demonstrate our system's failures to address underlying causes. That said, the bail law allows judges wide discretion to set bail in cases of re-arrest. Also, NYC's [Health Department has studied it](#) in 2015 and found jail is an ineffective response, whereas supportive housing can be transformative. Judges may set bail in the following circumstances:
 - a. If a person has an open felony case and is accused of a second felony, even though the data is clear neither case is likely to result in a felony conviction, much less a jail or prison sentence.
 - b. If a person has an open misdemeanor case and is arrested on a second misdemeanor, when both charges involve any allegation of any "harm" to anyone or anything – and last year lawmakers explicitly expanded the definition of "harm" to include theft.
 - c. If a person is on probation or parole.
 - d. If a person has a felony conviction within the last ten years, not counting time incarcerated.